

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for an Order Approving an Amendment to the Purchase Agreement for Long-Term Energy and Capacity Between Pacific Gas and Electric Company and Gaylord Container Corporation, a Delaware Corporation.

Application 02-01-041

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING JOINT MOTION OF PACIFIC GAS AND ELECTRIC COMPANY
AND CALIFORNIA COGENERATION COUNCIL FOR LEAVE
TO FILE SUPPLEMENTAL INFORMATION
AND REQUESTING FURTHER INFORMATION**

This ruling grants the joint motion of Pacific Gas and Electric Company (PG&E) and the California Cogeneration Council (CCC) for leave to file supplemental information, and requests additional information regarding PG&E's Application (A.) 02-01-041.

On January 31, 2002, PG&E filed A.02-01-041 and a Motion for an Expedited Order Approving an Amendment to the Power Purchase Agreement (PPA) between PG&E and Gaylord Container Corporation (Application). On February 11, 2002, PG&E made a Supplemental Filing in support of its Application. The Application requests Commission approval of a Third Amendment (Amendment) that modifies the PPA. The Amendment provides for a 3-1/2 year fixed energy price and resolves certain litigation between Gaylord Container, a qualifying facility (QF), and PG&E. PG&E estimates that as a result of the 3-1/2 year fixed price ratepayers will pay approximately

\$3.0 million more than they would pay under current short-run avoided cost prices.

On February 20, 2002, the CCC filed a response in support of PG&E's Application. CCC's response discussed why the Application is reasonable and should be approved. No other parties have filed responses.

On April 15, 2002, the CCC and PG&E filed a motion for leave to file supplemental information regarding the Application. This supplemental information is similar to information provided in response to my ruling in A.02-01-042.¹ The supplemental information is based on an evaluation by MRW & Associates, and provides information regarding projected natural gas prices, gas price volatility, stabilization of Gaylord Container's operations as a reliable QF, and a discussion of the settlement of litigation between PG&E and Gaylord Container.

However, the information provided with regard to the settlement of litigation is incomplete. As explained in the supplemental information provided April 15, 2002, the settlement of litigation assumes a number of conditions necessary to conclude that the potential costs of litigation exceed the \$3.0 million premium paid by ratepayers for energy during the 3-1/2 year term of the Amendment. These assumptions include: (1) that ratepayers are liable for the litigation between PG&E and Gaylord Container, (2) that the damages to consider are defined as the difference between the total payments that Gaylord Container would expect to receive under the current PSA (contract) (i.e., energy,

¹ A.02-01-042 is an application seeking Commission approval of an amendment for another QF with similar terms and conditions as the amendment proposed for A.02-01-041.

capacity, and capacity bonus payments) and payments Gaylord Container might receive from selling on the open market, (3) that in calculating the value of damages Gaylord Container's energy price on the open market would not include any value for capacity, (4) that the inability of Gaylord Container to sell on the open market during summer 2001 is a result of actions by PG&E, and (5) that contract termination is an appropriate or viable assumption for calculating damages given that (a) PG&E and Gaylord Container have assumed the PPA in their respective bankruptcy proceedings², (b) Gaylord Container has been in operation, supplying PG&E with both energy and capacity since July 2001 under a Supplemental Payments contract (the First Amendment), and (c) that Gaylord container is a viable QF on a going-forward basis.

This ruling directs PG&E to file information supporting these assumptions, the calculations and analysis used to derive the potential ratepayer liability, and any other information regarding litigation risk relevant to this Application. All such information must be verified and supported by declarations.

Although the supplemental information provided April 15, 2002 was filed by PG&E and the CCC, in this ruling I am directing that the response be filed by PG&E and not jointly by PG&E and the CCC. This provision is due to the nature of the requested information; namely, further information and analysis of litigation between PG&E and Gaylord Container. However, CCC may file a concurrent response to the ruling, or may file a response to PG&E's filing.

PG&E states in its motion that expeditious approval of the Application is necessary in order to provide Gaylord Container the opportunity to purchase

² In addition, PG&E has assumed the Long Term Intrastate Natural Gas Transportation Service Agreement in its bankruptcy case.

natural gas at favorable prices. In order to analyze the required information in an expeditious manner, PG&E is requested to file this information no later than May 24, 2002.

Therefore, **IT IS RULED** that:

1. The Motion of Pacific Gas and Electric Company (PG&E) and California Cogeneration Council (CCC) for Leave to File supplemental Information Regarding the application is granted.

2. Additional information is required to justify PG&E's Application 02-01-041.

3. No later than May 24, 2002, PG&E shall provide the information requested as described in this ruling. All information shall be verified and supported by declarations.

4. CCC may file a concurrent response to this ruling, or may file a response to PG&E's filing.

5. If the CCC chooses to respond to PG&E's filing to this ruling, that response shall be provided within 10 days of PG&E's response.

Dated May 8, 2002, at San Francisco, California.

/s/ BRUCE DEBERRY

Bruce DeBerry
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Joint Motion of Pacific Gas and Electric Company and California Cogeneration Council for Leave to File Supplemental Information and Requesting Further Information on all parties of record in this proceeding or their attorneys of record.

Dated May 8, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.